

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

| | | |
|---|---|------------------------------|
| _____ |) | |
| IN RE YASMIN AND YAZ |) | 3:09-md-02100-DRH-PMF |
| (DROSPIRENONE) MARKETING, SALES |) | |
| PRACTICES AND PRODUCTS LIABILITY |) | MDL No. 2100 |
| LITIGATION |) | |
| _____ |) | |

This Document Relates to:

KERRY SIMS,

Plaintiff,

-vs-

NO. 09-CV-10012-DRH

BAYER CORPORATION, et al,

Defendants.

MINUTES OF PRETRIAL CONFERENCE

PRESIDING: Chief Judge David R. Herndon

DATE: November 15, 2011

PLACE: East St. Louis, Illinois

COURT REPORTER: Laura Blatz

COURTROOM DEPUTY: Sandy Pannier

**APPEARING FOR PLAINTIFFS: Angela Mason, Roger Denton, Michael
Papantonio, Michael London, Stephanie O'Connor,
Mark Niemeyer, Seth Katz**

**APPEARING FOR DEFENDANTS: Adam Hoeflich, John Galvin, Brian Prestes, Shanya
Cook, Phil Beck**

TIME: 9:20 AM - 3:15 PM

Recess: 11:25 AM - 12:30 PM

Court notes we are arguing plaintiff's motions in limine numbers 5, 6, 7, 11, 13, 14 and 19. Angela Mason presents arguments on motion in limine #5 (Doc. 142) on behalf of plaintiff. Phil Beck presents response on behalf of defendants. Reply by Ms. Mason. Court **DENIES** motion and accepts the self-imposed restrictions suggested in open Court by Mr. Beck.

Next motion in limine is #6 (Doc. 143) to exclude. Arguments presented by Mark Niemeyer on behalf of plaintiff. Response by Phil Beck on behalf of defendants. Reply by Mr. Niemeyer. Court **GRANTS** motion in part pursuant to rulings made in Court.

Next motion in limine is #7 (Doc. 144) to exclude evidence. Arguments presented by Seth Katz on behalf of plaintiff. Response by Shayna Cook on behalf of defendants. Reply by Mr. Katz. Court **GRANTS** motion pursuant to findings made in Court.

Next motion in limine is #11 (Doc. 149). Arguments presented by Stephanie O'Connor on behalf of plaintiff. Response by Brian Prestes on behalf of defendants. Reply by Ms. O'Connor. Court believes this should be analyzed as motion in limine. Motion is **DENIED**.

Next motion in limine is #13 (Doc. 151). Arguments presented by Stephanie O'Connor on behalf of plaintiff. Response by Brian Prestes on behalf of defendants. Court rules this is an issue for the finder of fact and **DENIES** this motion.

Next motion in limine is #14 (Doc. 152). Arguments presented by Roger Denton on behalf of plaintiff. Response by Phil Beck on behalf of defendants. Reply by Mr. Denton. Court **GRANTS** motion - to eliminate further confusion and make sure there is no argument or highlighting, the statement on the report will be redacted as well.

Next motion in limine is #19 (Doc. 157). Arguments presented by Roger Denton on behalf of plaintiff. Response by Shayna Cook. Reply by Mr. Denton. Response by Ms. Cook. Court finds there is a lack of trustworthiness and not admissible as a business record so Court **GRANTS** motion.

Afternoon session

Mr. London addresses the Court regarding plaintiff's concerns regarding defendants' withdrawal of certain motions in limine. Mr. Beck advises they withdrew motions as they concluded they should withdraw them and if there are objections they will be taken up in the normal course of the trial. Reply by Mr. London. Court advises it hopes to take up as many exhibits as possible prior to the trial. Response by Seth Katz.

Arguments presented by Adam Hoeflich in support of defendant's motion in limine No. 3 (Doc. 109). Response by Seth Katz on behalf of plaintiff. Reply by Mr. Hoeflich. Court finds there are disagreements in the briefs and plaintiff's interpretation is correct. Court **GRANTS IN PART** and **DENIES IN PART** that motion for reasons stated in open Court.

No arguments necessary on motion #4.

Arguments presented by Adam Hoeflich in support of defendant's motion in limine #6 (Doc. 117). Response by Mike Papantonio on behalf of plaintiff. Reply by Mr. Hoeflich. Court **DENIES** motion for reasons stated in open Court.

Arguments presented on defendant's motion in limine #7 (Doc. 121) by Adam Hoeflich. Response by Mr. Papantonio. Reply by Mr. Hoeflich. Motion is **GRANTED**. Felony conviction will not be allowed.

Arguments on defendant's motion in limine #8 (Doc. 125) presented by Phil Beck. Response by Seth Katz on behalf of plaintiff. Court advises counsel that it disagrees with plaintiff. Court **GRANTS** motion as there is not evidence that would show that Bayer had a role in producing the video.

Court inquires about "potential agreements" regarding motions. Mr. Prestes advises they have presented stipulation to plaintiff and are hopeful this can be worked out by noon tomorrow.

With respect to exhibits, Mr. Prestes advises they have exchanged objections and they received plaintiff's exhibit list and images and a new exhibit list that was supplemented last Thursday. They are in process of documenting objections to those.

Court inquires as to number of lawyers that will be involved in the trial, IT people, support people, etc. Mr. London advises Mr. Douglas will be trying the case for plaintiff and he is not here today. Counsel requests tables for first row for lap tops and a file cabinet as there are at least 13 boxes of exhibits. Counsel will bring what is needed. Counsel believe this courtroom will be large enough for the trial. Defense core group will consist of 6-8 lawyers and IT people as well as support people. Court suggests we can run closed circuit TV to another courtroom if one is available for those days that this might be warranted. Court may look into this possibility.

Court requests that the proposed exhibit list be presented to the courtroom deputy in WordPerfect format.

The jury will be questioned collectively, with 50 at a time, and then challenges taken. A jury of 12 will be selected. We can go to the jury with as few as 6 jurors. Selection will be in panels of 50 - court will take cause challenges first and see if next 50 are needed. Number of peremptories per side will be 3.

Defendant request until the end of the day tomorrow to respond to PSC request to de-designate confidential documents. Counsel will also advise the Court by noon tomorrow what remaining motions in limine are agreed to and which ones need to be ruled on.

Counsel for each side will receive one copy of the questionnaire in alphabetical order on January 6. The jurors will not be seated in alphabetical order but by random selection on January 9. Court advises counsel the trial days will go no longer than 4:30 PM or 5:00 PM each day.